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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/676,447
Filing Date: October 02, 2003
Appellant(s): WILLIAMS ET AL.

Lynette Werner
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 5/12/09 appealing from the Office action mailed 12/12/08.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6474735	Carnahan	11-2002
6296312	Congleton	10-2001
6394553	McAllister	05-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 43-46, 59-61, 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carnahan (6,474,735) in view of Congleton (6,296,312). Carnahan disclose the use of a child seat (20) for seating a child within a vehicle, the child seat comprising a base (30) having a seating surface; an armrest (22) connected to the base on a side of the seating surface and positioned on the side of the seating surface; wherein the child seat has a belt path (112) configured to receive and locate relative to the child a lap belt of a restraint system of the vehicle (figure 1 and 7); wherein the child seat is configured for placement on a seat (107) of the vehicle.

Carnahan fails to show the use of the armrest is adjustable along a straight line between a first height position relative to the seating surface and a second height position relative to the seating surface; wherein the armrest includes only one connecting portion that slidably (fit) telescopes relative to a corresponding receiving portion of the base; wherein one of the receiving portion and the connecting portion includes a slot for receiving a tab attached to the a flexible portion located on the other of the receiving portion and the connecting portion; holes for receiving protrusion.

Congleton teaches the use of the armrest (10) is adjustable along a straight line between a first height position relative to the seating surface and a second height position (figures 1-2) relative to the seating surface; wherein the armrest includes only one connecting portion (12) that slidably (fit) telescopes relative to a corresponding receiving portion (60) of the base; wherein one of the receiving portion and the connecting portion includes a slot (the opening of 78) for receiving a tab (the combination of 74,88,78,80,82,86) attached to the a flexible portion (is the combination between the plastic material and the spring element makes it flexible) located on the other of the receiving portion and the connecting portion; holes (located between the notches 75) for receiving protrusion (located at the end portion of 86) from the receiving portion (60) of the base. It would have been obvious to one of ordinary skill in the art to modify Carnahan with the teachings of Congleton in order to provide a different armrest that was easier to operate.

Claims 44-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carnahan and Congleton as applied to claim 43 above, and further in view of McAllister.

Congleton discloses the tab disengage with the slot when the tab is depressed (by way of pressing the tab it disengage from the slot). The Carnahan and Congleton fails to show the use of the receiving portion includes a second slot.

McAllister teaches the use of receiving portion includes a second slot (located on 18).

It would have been obvious to one of ordinary skill in the art at the time of invention to modify the receiving portion to include a second slot as taught by McAllister, in order to adjust the armrest for comfort.

Claims 62 and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carnahan in view of McAllister (6,394,553). Carnahan fails to show the use of each connecting portion includes first and second slots to receive the protrusion.

McAllister teaches the use of each connecting portion includes first and second slots (located on 18) to receive the protrusion (48).

It would have been obvious to one of ordinary skill in the art at the time of invention to modify the connecting portion with first and second slots as taught by McAllister, in order to adjust the height of the armrest to enhance the comfort of the occupant.

(10) Response to Argument

On pages 11-12, appellant argues the combination of Carnahan et al. and Congleton. Appellant argues that modifying Carnahan would destroy the reference. In response, it is submitted that Carnahan is cited in the rejection to show a child seat

having armrests that raise to a higher position. As is well known in the art, there are various styles of armrests, and it is maintained that it would have been obvious to one of ordinary skill in the art to modify Carnahan to provide an alternative armrest. Congleton is cited to show a typical armrest attached by only one connecting portion that telescope along a straight line. It would have been obvious to one of ordinary skill in the art to modify Carnahan with the teachings of Congleton to provide the style of armrest taught by Congleton in order to have an armrest that was easier to operate. Furthermore, as decided by the Supreme Court Decision in *KSR International Co. v. Teleflex Inc.*, as all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention.

Arguing that the combination would destroy the reference, appellant alleges that the armrest of Congleton would not connect properly to Carnahan and would interfere with the bottom of the seat. In response this argument, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Carnahan is merely used for the style of armrest, not necessarily the method of installing the armrest. However, in this case, it does not appear that the armrest of Congleton would in any way interfere.

Congleton uses a thin and flat bracket (see 14, Figure 1) to install and it appears that this bracket could very easily be mounted on the underside of the seat without any interference or complications. Furthermore, even if the size of this mount was an issue, it is believed that one of ordinary skill in the art could easily provide a recess on the bottom of the seat to attach the bracket.

In response to appellant's arguments that the combination of Carnahan in view of Congleton does not render obvious having the limitations of a tab, as a tab is essentially a tongue or flap material.

The examiner is of the opinion that the Congleton tab (74, 88, 78, 80, 82, 86) is equivalent to applicant tab 255 on figure 2 of the drawings (i.e., multiple elements combined to make a "tab"). Furthermore, it is noted that the features upon which **applicant relies (i.e., essentially a tongue or flap) are not recited in the rejected claim(s)**. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. **See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993)**. The examiner maintains that the latch member of Congleton is an equivalent to the "tab" of the claimed invention as noted by the combination of elements above.

In response to appellants arguments that the combination of Carnahan in view of Congleton does not render obvious having the limitations of integrally formed resilient flexible tab (regarding claims 46 and 61). The appellant is reminded that integral formed does not need to be a unitary piece; it can be a combination of pieces. Therefore, the examiner is of the opinion that the Congleton tab (74, 88, 78, 80, 82, 86)

is integral formed and it is flexible because of the combination of the spring and the fact that the latch member will have a certain degree of flexibility. Flexibility is a relative term, particularly since virtually anything will flex if enough pressure is applied to it. --

Freedman v.Harris-Hub Co., Inc. (DC NIII) 163 USPQ 397.

In response to appellants arguments that the combination of Carnahan in view of Congleton does not render obvious having the limitation of holes for receiving protrusion from the receiving portion of the base. The examiner is of the opinion that Congleton does in fact disclose holes (located between the notches 75) for receiving protrusion (located at the end portion of 86) from the receiving portion (60) of the base.

In response to appellant's argument that the combination of Carnahan and McAllister reference does not render obvious in having the limitation of an integrally formed resilient flexible tab, the McAllister reference was merely used to show a receiving portion with a second slot.

Appellant's argument that the PTO has issued 10 office actions is noted. The examiner notes that appellant has filed a plurality of amendments and RCEs and in most cases the amendments have required new or different rejections.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/E. G./

Examiner, Art Unit 3636

/DAVID DUNN/

Supervisory Patent Examiner, Art Unit 3636

Conferees:

/D. D./ Supervisory Patent Examiner, Art Unit 3636

/Marc Jimenez/ TQAS TC 3600